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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,629	02/10/2004	Naoaki Yamanaka	040803-0307870	9790
909 7590 04/15/2010 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
EXAMINER FLYNN, NATHAN J				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NAOAKI YAMANAKA and EIJI OKI

Appeal 2009-010948
Application 10/774,629
Technology Center 2400

Mailed: April 15, 2010

Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 21, 2009. A Docketing Notice was mailed and Appeal Number 2009-010948 was assigned on June 1, 2009. A review of the application has revealed that the application was not ready for an appeal. Accordingly, the application is herewith being remanded to the Examiner. The matter requiring attention is identified below.

Claim 1 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, second paragraph. *See Aristocrat Techs. Austl. Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008); *Ex parte Rodriguez*, 92 USPQ2d 1395 (BPAI 2009). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled "Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph," located at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf. Thus, there is a question as to whether claim 1, and the claims which depend upon this claim, meets the requirements of being definite under 35 U.S.C. § 112, second paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 1, and the claims which depend upon this claim, meets the requirements of 35 U.S.C. § 112, second paragraph.

If there are any questions pertaining to this order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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